IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.CJ.

APPEAL NO.202 OF 2006
IN
NOTICE OF MOTION NO.1295 OF 2005
IN
SUMMARY SUIT NO.1743 OF 1983

Paresh K. Thakkar .. Appellant
v/s.
Jitendra P. Thakkar and another .. Respondents

Mr. P.S. Shah for the Appellant.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.
DATED : 12TH SEPTEMBER, 2006.

P.C.

Heard.

2. The appeal is wholly misconceived and devoid of any substance. Rather, it is an abuse of process of the court.

3. By the impugned order dated 12th July, 2005, the trial Judge dismissed the plaintiff's suit as withdrawn. The grievance of the defendant No.1 in challenging the said order is that the plaintiff was injuncted by the order dated 7th April, 1989 in notice of motion No.1911 of 1987 in suit No.2132 of 1986 from withdrawing the present suit (suit No.1743 of 1983).

4. We read the order dated 7th April, 1989 and what is ordered therein is that the present plaintiff (defendant No.1 therein)

was restrained from withdrawing the present suit (suit No.1743 of 1983) without first informing the plaintiff therein (present appellant). The order dated 12th July, 2005 has been passed in the presence of all the parties and, thus, withdrawal of the suit cannot be said to be inconsistent with the order dated 7th April, 1989.

5. The appeal has no merit and is dismissed in limine.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)